

A G E N D A

GENERAL INFORMATION MEETING

SUBMISSION OF 254 FORM & SUPPORTING REFERENCES

WILDCAT LANDFILL REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

FEBRUARY 13, 1985 - 10:00 a.m.

- DISTRIBUTION OF GENERAL INFORMATION PACKAGE

Site history and investigation objectives
General provisions
State assurances
Proposed scope of services
Professional Services Negotiation Act

- QUALIFICATION SUBMISSION

Standard Form 254
Supporting qualifications of applicable experience
Project schedule (10/7/86 project completion)

- SUBMISSION PROCEDURE

- GENERAL DISCUSSION

Sample analysis (tasks 11, 12, 13, 14, 15, & 16)

- QUESTIONS AND ANSWERS

AR300187

(BID ADVERTISEMENT)
NOTICE TO CONSULTANTS

The Department of Natural Resources and Environmental Control, Division of Environmental Control, invites all interested firms to submit ten copies of their most recent 254 form (Architect-Engineer and Related Services Questionnaire) and any other supporting information for the department's consideration in selecting the most qualified firm to enter into a contract for consultant work for a remedial investigation and feasibility study at the Wildcat Landfill in Kent County, Delaware.

The scope of work shall include but not be limited to investigation and characterization of site conditions, determination of possible effects on human health and the environment, and identification of the need for and range of feasible measures to prevent or reduce adverse effects.

All qualified persons or firms interested are urged to attend a general information meeting to be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, Delaware on February 13, 1985 at 10:00 a.m.

All formal responses to this matter must be received by the Department of Natural Resources and Environmental Control, Attention: Benjamin Coston, Box 1401, Dover, Delaware 19903 no later than February 25, 1985.

AR300188

Wildcat Landfill

Kent County, Delaware

Site History and Investigation Objectives

Location and Description

The Wildcat landfill site is about 84 acres, although only about 40 acres were used for the disposal of wastes. The site is located in Kent County, Delaware between the west bank of the St. Jones River and State Route 10 west of the Dover Air Force Base. The site, shown on the attached map, is about 2.4 miles southeast of Dover, Delaware at 39°17'20" north latitude and 75°30'00" west longitude. The Dover Air Force Base is located less than 1,000 feet to the east.

The landfill is located in wetlands along the St. Jones River. The site is covered with soil excavated from the nearby race track and is well covered with natural vegetation. Drainage from State Route 10 to the west enters a pond on the northwestern edge of the landfill. Leachate pools and streams, characterized by an orange-red color, are located in several places at the site.

Site History

The site is owned by Mr. Alan Hunn and has been in the Hunn family for 200 years. The site was used as a sanitary landfill from 1962 to 1973. During this time, municipal and industrial wastes were accepted. Liquid and solid wastes were mixed together, compacted, and covered. The landfill was ordered closed by DNREC in 1973. Wastes disposed include trash, sludge oil, bulk solids, liquid and solid latex, paint solvents, and chemical residues. The quantities of materials dumped at the site are unknown. After its closure in 1973, the site was covered with borrow material from the race track area, revegetated, and has remained unused.

The Columbia formation, composed of coarse sand and gravel, is the uppermost unconsolidated material near the landfill and is a water table aquifer. Underlying the Columbia formation is the Chesapeake Group which includes the Cheswold artesian aquifer. The Cheswold aquifer is separated from the Columbia formation by a confining bed of sandy silt and clay. The Piney Point aquifer is separated from the Cheswold aquifer by a confining bed of very fine sand and silty clay. The Cheswold and Piney Point aquifers are the major sources of drinking water for the city of Dover and surrounding areas. The Columbia aquifer is used primarily by residents with individual wells.

AR300189

Remedial Investigation and Feasibility Study Objectives

1. Determine the local geological and hydrogeological conditions.
2. Determine the rate and direction of migration of contamination from the site.
3. Determine the risk of exposure of contaminants to people and the environment.
4. Determine waste characteristics in order to assess the threat to water supplies and the environment.
5. Evaluate the feasibility of treatment, disposal, and control methods which may be necessary.
6. Evaluate the environmental and financial consequences of taking no action.

The attached scope of services shall form the basis of a contract with the selected consultant. Some of these tasks will be performed by DNREC and they are so noted.

AR300190

Attachment A

Scope of Services

Remedial Investigation

Task 1. Obtain Access to the Property

Site access shall be obtained by the Department before the contractor begins field work.

Task 2. Prepare Health and Safety Plan

The contractor shall adopt a health and safety plan for activities performed pursuant to this contract which is at least as strict as the plan prepared by the Department. Said plan shall be consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act section 104(f), the Environmental Protection Agency's (EPA) Occupational Health and Safety Manual, and other applicable EPA and Department safety guidance provided by the Department's project officer. As a condition to this contract the Department shall require the contractor and subcontractors, if any, to comply with the health and safety plan and all relevant federal and state health and safety standards. No field work at the site shall occur until the plan has been approved by the Department.

Task 3. Prepare Quality Assurance Plan

A quality assurance plan shall be prepared by the contractor for the site based on the Department's general quality assurance plan. The plan shall include procedures for sampling; field testing; chain-of-custody of samples; sample handling, packaging, preservation, and shipping; recordkeeping and documentation; and any other procedures needed for the remedial investigation and feasibility study on or related to the site. Sample analysis requirements shall be specified. The plan shall be reviewed and approved by the Department and EPA before the investigation begins.

Task 4. Collect and Evaluate Existing Data

A complete data compilation and assessment of site specific information from all sources shall be made. The effort shall concentrate on information pertaining to the Wildcat landfill, but shall include information generated in other studies, especially the one being conducted at Dover Air Force Base. This information shall include, but not be limited to the following:

Geology - boring logs from all wells drilled in the vicinity of the Wildcat landfill including highway borings;

Groundwater - sampling dates, water level readings, groundwater quality, recharge rates, and pump test data specific to wells near the site;

Surface water - St. Jones River and Tidbury Creek flow rates and water quality in the vicinity of the site;

Soils - analytical results of soil samples obtained during previous site investigations;

Air - results of air quality monitoring conducted in the vicinity of the site; and

Waste composition - landfill operating records or analytical data regarding waste types, concentrations, locations in the landfill, and quantity disposed.

To the extent the Department has such information in its files the Department shall provide it. This does not relieve the contractor from searching other sources of information including, but not limited to EPA; Delaware Geological Survey; University of Delaware; Delaware Division of Public Health; and parties possibly responsible for using the site as identified by EPA.

The contractor shall evaluate the adequacy of this information for determining on site and area hydrogeology and the degree and extent of contamination. Reinterpretation of existing data shall be made if necessary. Additional data requirements shall be identified by the contractor.

Task 5. Perform Preliminary Site Survey

A preliminary site survey shall be conducted by the contractor to evaluate site conditions for location of the initial groundwater, surface water, stream sediment, and soil sampling points and to define the depth and areal extent of buried containers according to accepted geophysical methods. The magnetic field will be measured at each point in a 20 foot square grid within the 100 foot grid established in task 10.

Task 6. Prepare Sampling Plan

A sampling plan shall be prepared by the contractor. Sampling locations shall be established by the contractor for the soil, surface water, groundwater, and stream sediment samples. These locations shall be based on site data obtained during the preliminary survey and from detailed review of existing information. The plan shall be reviewed and approved by the Department and EPA before the remedial investigation begins. The plan shall also specify procedures for storage and disposal of any wastes generated during the investigation.

Task 7. Procure Permits and Other Authorizations

Access to the work areas shall be obtained by the Department before work at the site begins. State environmental permits for the remedial investigation shall be obtained by the Department. The contractor shall notify the Department of all utility easements and other authorizations required to carry out this contract. The Department shall be responsible for obtaining the required access. The contractor shall supply the names, addresses, and, where possible, the telephone numbers of those from whom such access authorization is required.

Task 8. Prepare Topographic and Location Maps

The contractor shall prepare a topographic map of the site (approximately 100 acres) with a two foot contour interval using aerial photogrammetric methods. The contractor or approved subcontractor shall establish horizontal and vertical ground control as required by the photogrammetrist. The product of task 8 shall be a single, scribed, double matte, three mil. washoff mylar with reversed image. The product shall

have a horizontal scale of 1 inch = 50 feet and a contour interval of two feet. A grid coordinate system shall be established based on the most accurate control points available in the vicinity of the site. Control points to be considered include, but are not limited to, state plane coordinate system, U. S. Geological Survey (USGS) monuments, Army map service monuments, or county highway monuments. Mapping and ground surveys shall be completed to the National Map Accuracy Standards for the scale indicated. Copies of the map shall be given to EPA and the Department upon completion.

The contractor shall prepare a location map at a scale of 1"=400' which encompasses an area approximately three miles north to south by two miles east to west. Major roads, streams, and landmarks shall be shown. Monitoring wells and public and industrial supply wells shall also be shown. The location map shall be prepared by tracing an enlargement of an existing map or aerial photograph.

Task 9. Mobilize Field Equipment

The equipment needed during the investigation shall be provided by the contractor or by subcontractors. Equipment scheduled for use includes:

- * Field office;
- * Surveying equipment;
- * Drill rig;
- * Sampling tools and equipment;
- * Health and safety equipment; and
- * Decontamination equipment.

Small equipment shall be stored in a secure field office trailer. The placement of the trailer shall be specified in the health and safety plan. The drill rig shall remain on site in a secure location.

Task 10. Perform Baseline and Grid Survey

A baseline shall be established on the site by the contractor for the purpose of providing horizontal control of soil, stream sediment, and surface water sampling locations. Stakes shall be set at one hundred foot intervals and marked with stations and elevations. A grid system shall be surveyed and staked for sampling. Other physical features and improvements shall be located as required.

All soil, surface water, and stream sediment sampling points shall be located and described horizontally in accordance with the staked grid system. This will allow for the repeat sampling of any monitoring point at a later date, should this be necessary. Each sampling location shall be included on a copy of the topographic map prepared in task 8.

Task 11. Conduct Landfill Exploration

Since limited information is available on the waste material and landfill cover at the Wildcat site, a detailed landfill exploration program shall be conducted by the contractor.

Soil and water samples shall be taken on a 300-foot grid system throughout the site. Information gathered during the magnetometer survey shall be used to determine where additional sampling may be required.

Exploratory borings shall be used to determine the specific subsurface conditions. The borings shall be installed using standard hollowstem auger drilling methods. These borings shall be advanced from the surface into the natural sediments just below the fill. It is estimated that twenty shallow borings will be required within the extent of the landfill to adequately assess the subsurface conditions. Split-spoon samples will be taken and the samples logged and described in detail by the contractor's geologist. The borings shall be backfilled with a soil and bentonite mixture from the bottom of the hole to within one foot of the surface, where a six inch bentonite seal will be placed. The remainder of the hole shall be filled in with cover material. In addition to the split-spoon samples, ten Shelby tube samples shall be taken of the natural sediments below the fill. Laboratory tests shall be conducted by the Department on each sample to determine the following characteristics:

- * Grain size distribution
- * Laboratory permeability
- * Specific gravity
- * Percent water
- * BTU content

- * BOD
- * Qualitative organics analysis

Task 12. Conduct Domestic Water Well Survey

The Department shall sample domestic, public, and industrial wells within one thousand feet of the landfill to determine the lack of or the extent of contamination.

This survey shall consist of the following elements:

- * Well inventory: The Department's well permit files shall be used to locate private wells. Well owners and users shall be notified of the sampling plan and asked to participate.
- * Sampling: Samples shall be collected from the tap. The type of pumping will be noted, as well as whether there are any treatment systems in use. If water is treated, samples shall be taken before and after treatment. The Department shall attempt to determine the construction details of each well, and if possible, water levels shall be measured in the well before sampling.
- * Analysis: The Department shall analyze each sample for the following constituents;

Chloride
Total dissolved solids
Total organic carbon
Iron
Manganese
Specific conductance
Nitrate (NO₃-N)

The contractor shall survey each well sampled both horizontally and vertically.

Task 13. Hydrogeologic Investigation

Site specific hydrogeologic information is virtually nonexistent. The purpose of this investigation is to identify and define hydrogeologic conditions at the site. Elements of the investigation shall include, but not necessarily be limited to the following:

- * Installation of Monitor Wells - Specific locations and number of monitor wells shall be determined by the contractor and approved by the Department. Approximately ten well clusters (1 shallow, 1 intermediate) shall be installed. Shallow wells shall be screened across the water table (approximately twenty feet deep), and intermediate depth wells shall be screened at the base of the unconfined aquifer (approximately fifty feet deep). Screen locations shall be determined by the on-site geologist. The wells shall be constructed in accordance with state regulations. Up to ten additional deep wells shall also be drilled into the underlying

Cheswold Aquifer. The precise number and locations shall be determined by the contractor and approved by the Department based on information such as groundwater flow rate and direction and groundwater quality obtained from the shallow and intermediate depth wells. These deep wells shall be constructed in accordance with Department specifications. Continuous air monitoring shall be conducted during the drilling of all wells. All drilling equipment shall be decontaminated after completion of each well. Cuttings and drilling fluids shall be collected and disposed as specified in the health and safety plan.

The contractor's geologist shall be on the site at all times during well construction to supervise drilling and to collect samples. Ditch samples will be collected at five foot intervals from all boreholes, and shall be placed in sample jars and labelled. Shelby Tube samples shall be taken at the bottom of all intermediate depth holes and at ten foot intervals in three of the deep holes. Deep wells shall be geophysically logged; this may be accomplished with the assistance of the Delaware Geological Survey.

- * Well Survey - Following the construction of all wells, each one shall be located horizontally and vertically with respect to the site grid and datum. These locations shall be included on the topographic map prepared in task 8.
- * Water Level Recording - Following the survey of all wells, water levels shall be recorded periodically from the wells by accepted practices. In addition, continuous water level recorders shall be installed in two shallow wells and a stream gauge shall be placed in the St. Jones River to monitor the effects of tidal fluctuations. Four seepage monitors shall be installed in the marsh adjacent to the river.
- * Pump Test - A pump test shall be conducted in accordance with accepted procedures to determine the hydraulic interconnection between the Cheswold and Columbia aquifers.

Task 14. Perform Surface Water and Stream Sediment Sampling

At least eight sediment and eight surface water samples shall be collected by the Department at locations specified by the contractor and agreed to by the Department.

Based on these and other data an assessment of surface water and sediment contamination shall be made by the Department. Each water and stream sediment sample shall be taken at the same sampling location. The samples shall be analyzed by the Department for the following parameters:

- * Acid extractable priority pollutants;
- * Volatile organic priority pollutants;
- * Base/neutral extractable priority pollutants;
- * Pesticide/PCB priority pollutants;

- * Heavy metal priority pollutants;
- * pH (in field); and
- * Temperature.

Task 15. Perform Soil Sampling

The soil sampling by the Department shall be limited to the former waste disposal pit and a reasonable area surrounding the pit's suspected boundaries. Soils shall be analyzed to determine the extent and nature of surface soil contamination. The actual number and location of samples will depend on information obtained from the existing data review and the preliminary field survey. The samples shall be analyzed by the Department for the following:

- * Acid extractable priority pollutants;
- * Volatile organic priority pollutants;
- * Base/neutral extractable priority pollutants;
- * Pesticide/PCB priority pollutants; and
- * Heavy metal priority pollutants.

Task 16. Perform Groundwater Sampling

Monitor wells installed by the contractor shall be sampled by the Department. The samples shall be analyzed by the Department for the following:

- * Acid extractable priority pollutants;
- * Volatile organic priority pollutants;
- * Base/neutral extractable priority pollutants;
- * Pesticide/PCB priority pollutants;
- * Heavy metal priority pollutants;
- * pH (in field); and
- * Specific conductance.

Task 17. Perform Data Evaluation

Following the applicable remedial investigation tasks, data generated during the study shall be evaluated by the contractor. The evaluation shall be used in the production of a report (task 21) to be submitted following the completion of the remedial investigation.

Task 18. Progress Reports and Meetings

Five times during the remedial investigation, meetings shall be held to review technical progress and to make decisions on future work tasks. These meetings shall also serve as an information exchange among the contractor, Department, and EPA. Those

attending these meetings shall include, but may not be limited to representatives of:

EPA, Region III;
EPA, Headquarters;
The Department; and
The Contractor.

The contractor shall also submit two types of monthly progress reports to the Department.

1. Technical Progress Reports

These progress reports shall consist of the following elements:

- * Status of work at the site and progress to date;
- * Percent of completion (% of work hours expended);
- * Difficulties encountered during the reporting period;
- * Actions being taken to rectify problems;
- * Activities planned for the next month;
- * Changes in personnel;
- * Target and actual completion dates for each element of activity including project completion.

The contractor shall use the Program Evaluation and Review Technique/Critical Path Method of project management and reporting.

2. Financial Progress Reports

These progress reports shall consist of, but may not be limited to the following elements:

- * Comparison of cost estimates and money expended for each task;
- * Comparison of percent completion per task with percent budgeted;
- * Requests for shifts of funds from task to task or new expenditure levels.

Task 19. Establish Objectives and Criteria for Remedial Actions

The Department shall establish the goals and objectives of site remediation. These goals and objectives shall include the determination of the degree of remediation required to mitigate adverse effects to human health and the environment.

Task 20. Identification of Remedial Alternatives

Appropriate remedial techniques shall be identified by the contractor which satisfy the site objectives. These techniques shall be evaluated singly and in combinations to determine how well they meet the established project criteria.

The identification process for remedial methods shall consider public health and safety concerns and existing EPA and Department hazardous waste and related regulations.

Task 21. Prepare Remedial Investigation Report and Feasibility Study Work Plan

After completion of the field investigations, all pertinent field and laboratory data shall be assembled into a detailed report of the remedial investigation. This report shall include detailed discussion of the following items:

- * Objectives of the remedial investigation;
- * A description of the study area, including soil type and depth, and the results of the laboratory testing;
- * Geologic framework and subsurface geologic conditions in the vicinity of the site;
- * Hydrologic conditions at and in the aquifers and the rate and direction of groundwater flow;
- * Groundwater and surface water quality in the study area;
- * Supporting data, such as chemical analysis reports, boring logs, and monitoring well level readings;
- * Remedial alternatives; and
- * Conclusions and recommendations of the study.

Maps, figures, and tables shall be prepared to support the text. Groundwater isocoon maps shall be prepared to illustrate the extent of groundwater contamination.

A work plan for the feasibility study shall be prepared. The work plan shall present a detailed schedule and budget for the activities to be undertaken. The major tasks of the feasibility study are as follows:

- * Perform any additional laboratory and field studies deemed necessary by the Department;
- * Evaluate remedial alternatives;
- * Develop conceptual design; and
- * Prepare final report.

The determination of a need for additional field and laboratory studies shall be based on the site assessment at the conclusion of the remedial investigation.

The work plan shall outline the laboratory and field studies necessary for a comprehensive evaluation of possible remedial responses, as well as cost estimates for these studies.

Task 22. Perform Laboratory and Field Studies

The need for lab and field studies will be determined in task 21. If treatability is still an issue but the lab and field studies are not deemed necessary, then literature review of the treatability issue will be performed for this task. If lab and field studies are deemed necessary, then costs for the necessary studies will be prepared. Permission to proceed with this task shall be required by the Department and EPA.

Task 23. Evaluate Remedial Alternatives

Alternatives developed in task 20 shall be evaluated by the contractor based on sections 300.68(e)(3)(h) and 300.68(e)(3)(i) of the National Oil and Hazardous Substances Contingency Plan.

The contractor shall also evaluate and rank the remedial measures based on the degree to which each satisfies the project objectives.

All information specific to the remedial measure evaluation shall be summarized and presented in a draft feasibility study report. This report shall include:

- * Supporting references on the feasibility of the remedial measures chosen for evaluation;
- * Acceptable engineering practices related to the design and implementation of the remedial measures chosen for evaluation;
- * Expected environmental effects of each remedial measure;
- * Preliminary conceptual drawings and sketches used to evaluate each remedial measure; and
- * The cost estimates for each remedial measure with appropriate references provided.

The report shall be prepared in a format agreed upon between the contractor and the Department before the feasibility study begins. All documents collected during the remedial measure evaluation shall be organized in a project file and shall be available for later reference.

All data developed during the feasibility study needed to support the recommendation of specific remedial measures shall be presented in the draft report. Remedial action alternatives shall be evaluated and risk assessments shall be performed. These evaluations and risk assessments shall consider the effects of possible development of lands surrounding the site and the increased pumping that could result from existing public wells and the possible development of new pumping centers. The risk assessments shall be prepared for the no action alternative and for four other remedial action alternatives. The EPA carcinogenic risk assessment method shall be used. Emphasis shall be placed on the risks associated with drinking groundwater from existing and possible future water supply wells. Observed water quality data shall be used as input in the risk assessment.

In addition, an assessment to determine bioaccumulation risks shall be performed.

All information specific to the remedial measure evaluation shall be summarized in the draft feasibility study report.

The draft report shall be used by the EPA, the Department, and the public to select the remedial measure(s) to be implemented. The contractor shall assist the Department in presenting the results of the feasibility study to the EPA Region III office, the public, and EPA Headquarters. As a result of the comments received, the EPA and the Department shall choose the remedial measure(s) to be implemented at the Wildcat landfill site. The contractor shall provide the necessary assistance and documentation for preparation of this decision.

Task 24. Develop Conceptual Design

A conceptual design of the selected remedial measure(s) shall be prepared for use in preparation of the detailed construction plans. The conceptual design shall be based on the findings of the remedial investigation and feasibility study.

The conceptual design plan shall include general arrangement drawings and suggestions for the construction specifications. The conceptual design plan shall accompany the final feasibility study report. This plan shall contain site information

needed for construction design, such as test boring logs, borehole testing data, groundwater conditions, and sampling analyses.

The conceptual design plan shall include the following:

- * The selected engineering approach with implementation schedule;
- * Any special implementation requirements;
- * Applicable design criteria;
- * Cost estimates including operation and maintenance cost figures; and
- * Operation and maintenance requirements.

Task 25. Prepare Final Report

A final report shall be prepared for submission to the EPA and the Department. The report shall include a summary of the results of the remedial investigation and feasibility study and shall present the data and conceptual design drawings for the chosen remedial measure(s).

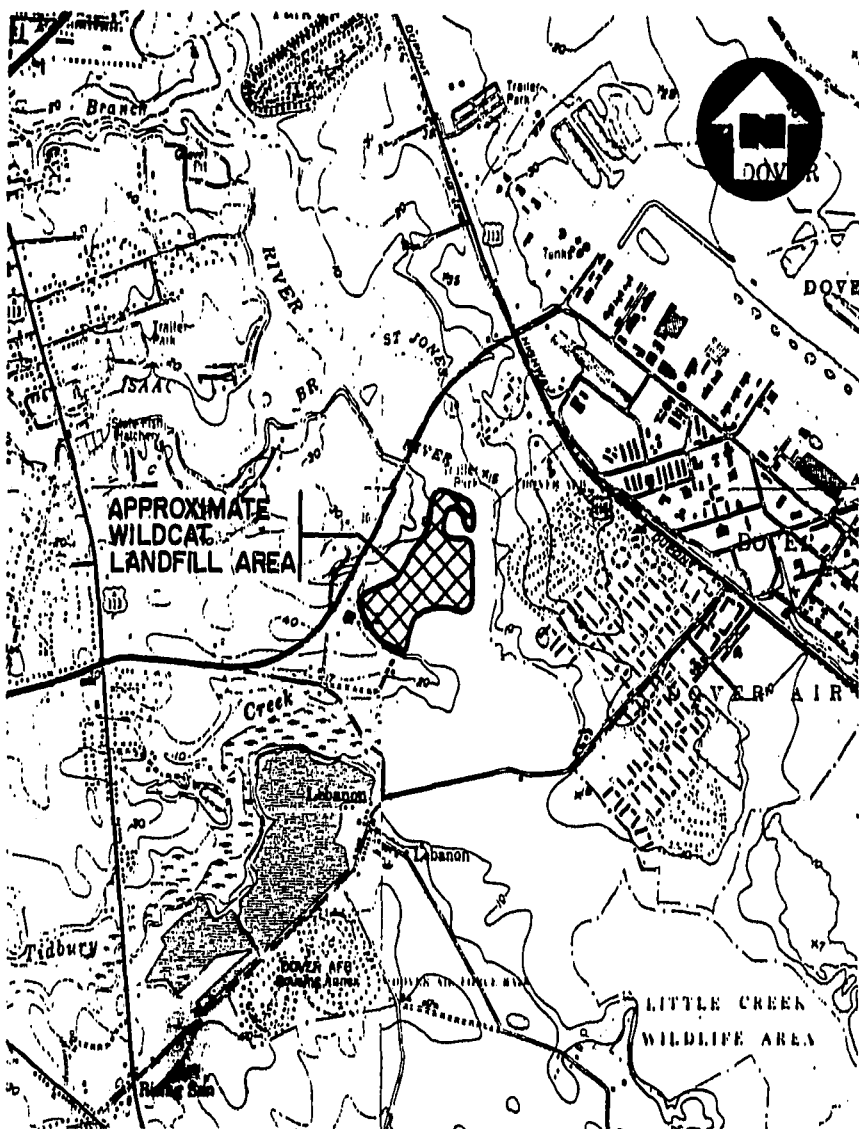
The final report shall include but may not be limited to:

- * Summary of assessment of contamination;
- * Summary of remedial measure evaluation;
- * Supporting data for chosen remedial measure(s);
- * Site topographic map with ground control data;
- * General arrangement drawings of remedial measure(s);
- * Typical geologic and design cross-sections;
- * Data from treatability studies necessary for final design; and
- * Preliminary cost estimates.

Deliverable Products

The contractor shall deliver the following final products to the Department upon the completion of each.

1. Six copies of the health and safety plan
2. Six copies of the quality assurance plan
3. The topographic map original
4. Six copies of the sampling plan
5. The location map original
6. Twenty copies of the remedial investigation final report
7. Six copies of the feasibility study work plan
8. Twenty copies of the feasibility study final report
9. Twenty copies of the conceptual design plan



REFERENCE:

U.S.G.S. 7.5' TOPOGRAPHIC MAPS, DOVER, FREDERICA, LITTLE CREEK AND WYOMING QUADRANGLES, DELAWARE, DATED 1956, PHOTOREVISED 1981 AND 1982, SCALE 1"=2000.



LOCATION OF WILDCAT LANDFILL
KENT COUNTY, DELAWARE

2-2

FIGURE 2-1

AR30004

GENERAL PROVISIONS

1. EPA awards this Cooperative Agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This Agreement is subject to all applicable EPA assistance regulations.
2. This Agreement is subject to the procurement standards of Title 40 of the Code of Federal Regulations, Part 33.
3. In accepting this Cooperative Agreement, the recipient agrees to the following conditions for the letter of credit method of financing:
 - A. Cash draw-downs will occur only when needed for disbursements.
 - B. Timely reporting of cash disbursements and balances will be provided, as required by the EPA Letter of Credit Users Manual.
 - C. The same standards of timing and reporting will be imposed on secondary recipient.
 - D. When a draw-down under the letter of credit occurs, the recipient will show on the back of the voucher (Form TFS-5401) the Cooperative Agreement number, the appropriate EPA account number, and the draw-down amount applicable to each account/activity.
 - E. When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not draw-down from another activity or site account without written permission from the EPA Project Officer and Award Official.
 - F. Funds remaining in an account after completion of an activity may either be returned to EPA or adjusted to another activity or site, at EPA's direction.

AR300205

- G. When a subactivity is completed, the recipient will submit a Financial Status Report (Standard Form 269) within ninety (90) days to the EPA Project Officer.
4. In accordance with section 2(d) of the Prompt Payment Act (PL 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late, nor may interest penalties be used to satisfy cost sharing requirements. Obligations to pay such interest will not be obligations of the United States.

AR300206

STATE ASSURANCES

The Delaware Department of Natural Resources and Environmental Control (the State) is the designated state agency responsible for implementing the Cooperative Agreement for the Wildcat Land-fill site. The State is responsible for the execution, administration and management of the Cooperative Agreement and/or the performance of the activities as described in the Statement of Work of the Agreement and will:

1. Conduct all activities under this Cooperative Agreement in a manner consistent with the revised National Contingency Plan (NCP), 40 CFR 300, dated July 16, 1982 (47 Federal Register 31180). Remedial alternatives developed as part of the remedial investigation and feasibility study will be identified, evaluated, and ultimately categorized as initial remedial, source control, or off-site measures based upon the factors established in section 300.68(e) of the NCP.
2. The EPA Project Officer will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The State Project Officer agrees to ensure that schedules and reporting requirements are met. All State-proposed modifications to schedules or activities will be reported immediately to the EPA Project Officer for approval. The EPA Project Officer agrees to notify the State Project Officer of schedule changes resulting from EPA enforcement activities.
3. The State agrees to satisfy all Federal, State, and local requirements, including permits and approvals, necessary for implementing activities addressed in this Cooperative Agreement. The State will provide access to the site, as well as all rights-of-way and easements necessary to

AR300207

complete the response actions. The State will provide access to EPA employees and contractors at all reasonable times.

4. The State and EPA agree that the community relations activities at the site will be conducted in accordance with the Community Relations Plan, contained in this application dated February, 1984. The State also agrees that public input will be sought at the end of the feasibility study and prior to the final selection of a remedy in accordance with the Community Relations Plan.
5. A final safety plan shall be prepared for activities performed pursuant to this Cooperative Agreement. The plan shall be approved by the EPA Regional Site Project Officer and shall be consistent with the requirements of CERCLA section 104(f), EPA's Occupational Health and Safety Manual, and other applicable EPA safety guidance provided by the EPA Project Officer. As a condition to awarding contracts to any person to engage in response actions, the State shall require contractors and subcontractors to comply with the developed safety plan and all relevant Federal health and safety standards. No field work at the site shall occur until a safety plan for that site has been approved by EPA.
6. The State will allow public access to its records in accordance with applicable State law. EPA will allow public access to its records in accordance with the procedures established under The Freedom of Information Act (PL 93-502), regulations promulgated pursuant thereto, and agency guidance. Both parties agree to protect each other's claims for confidentiality, particularly with regard to documents related to pending or ongoing enforcement actions, generated by either the State or EPA.

AR300208

At EPA's request and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the site. At the State's request and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning the site. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR 2, if the State has given EPA notice of the claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of EPA's intent to release that information. Absent notice of such a claim, EPA may make said information available to the public without further notice.

7. The State agrees to submit progress reports to the EPA Project Officer at quarterly intervals commencing at the start of the project. These reports shall include itemization of expenditures by object class and by each task/subactivity/activity in the SOW (expenditures to date and expenditures since the previous report); estimates (percentages) of work completed for each activity or subactivity in the SOW, including a description of the basis for the estimates; and estimated variances (cost and time) expected at project completion. The State in turn will require the contractor to submit monthly progress reports in the same fashion.
8. The State agrees to submit all final plans, reports, specifications, and/or recommendations to the EPA Project Officer for review and concurrence prior to issuance or implementation. Final contract documents or plans and contract changes shall be submitted to the EPA Project Officer prior to issuance for review to ensure technical adequacy and compliance with the terms of this agreement.

AR300209

9. If, during the period of this Agreement, responsible parties agree to perform, or pay for the performance of, any activities included in the SOW, EPA and the State agree to jointly negotiate any necessary modifications to this Agreement. If appropriate, this Agreement may be amended to adjust the State's letter of credit and the project SOW accordingly.
10. EPA has determined that participation in a response action at a site by a potentially responsible party could create an organizational conflict of interest (i.e., the contractor would be placed in a position where its interests as a potentially responsible party would conflict with its ability to properly perform the work or would otherwise adversely affect State or Federal enforcement action). Therefore, the State shall require a bidder or offeror on any contract funded under this Cooperative Agreement to provide, with its bid or proposal: (1) information on its status and the status of parent companies, subsidiaries, affiliates, and subcontractors as potentially responsible parties at the site; (2) certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; (3) a statement that it shall immediately disclose any such information discovered after submission of its bid or proposal, or afterward. The State shall evaluate such information and shall exclude any bidder or offeror who is a potentially responsible party at the site if the State determines the bidder's or offeror's conflict of interest is significant and cannot be avoided or otherwise resolved.
11. Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR section 300.65, shall not be restricted by the terms of this Agreement. EPA and the State may jointly suspend or modify the remedial activities in the SOW of this Agreement during

AR300211

and subsequent to necessary emergency response actions.

12. Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures, or protocols prescribed in this Agreement to be followed by the State during the performance of its obligations under this Agreement are for assurance of the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to the subject matter of this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other party entered into, committed or performed with respect to or in the performance of this Agreement.

13. EPA and the State agree that, with respect to the claims that each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for reimbursement of any services, materials, monies, or other thing of value expended by EPA or the State for response activity at the site described herein, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against, a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Agreement not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial

AR300211

or administrative proceedings. This provision has no effect on litigation already instituted by the State against any third party for failure to properly operate a landfill on the site described herein and failure to properly close a landfill on the site described herein. Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied. EPA and the State agree that they will cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potential third parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation. EPA and the State agree that judicial action taken by either party against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Agreement is located, or in such other judicial district of the United States District Court as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties of this Agreement. The award of this Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under sections 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other statutory provision or common law.

AR300212



STATE OF DELAWARE
DEPARTMENT OF JUSTICE

CHARLES M. OBERLY, III
ATTORNEY GENERAL

March , 1984

DIRECT DIAL

ATTORNEY GENERAL'S STATEMENT FOR
STATE COOPERATIVE AGREEMENT

I hereby certify, pursuant to my authority as Attorney General, that in my opinion the laws of the State of Delaware provide adequate authority to carry out the responsibilities set forth in the attached State Cooperative Agreement (hereinafter referred to as SCA). I further certify that the Secretary of the Department of Natural Resources and Environmental Control has adequate legal authority as described below, to enter into the SCA with the U. S. Environmental Protection Agency and to fulfill the terms of that Agreement.

In support of this certification, reference is made to 29 Del. C. §8003(5) which empowers the Secretary to "[M]ake and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purposes." It is my opinion that the subject matter of the SCA is well within the scope of the above provision.

Further, 7 Del. C. Chapter 60 vests in the Department and the Secretary the overall authority and responsibility for protecting and conserving the land, water, underwater and air resources of the State in the best interests of, among other things, the health and safety of the public.

Further, 7 Del. C. Chapter 63 confers upon the Department and the Secretary the authority and responsibility for all aspects of hazardous waste management in Delaware.

Taken together, it is my opinion that the above authorities provide an adequate basis for the Secretary, on behalf of the State of Delaware, to enter into and fulfill the responsibilities set forth in the attached SCA.

Charles M. Oberly
Charles M. Oberly
Attorney General

AR300213

(c) The Secretary of the Department of Labor shall be responsible for the administration of this section and shall adopt such rules and regulations and issue such orders as he deems necessary to achieve the purposes thereof, provided that no requirement established hereby shall be in conflict with § 6914 of this title. (29 Del. C. 1953, § 6921; 58 Del. Laws, c. 370, § 1.)

§ 6921. Transfer of school district bids.

(a) This subchapter shall not prevent an agreement between a school district and a bidder whereby the bidder agrees to make available to one or more other school districts the bid prices he submits to the first school district.

(b) This subchapter shall not prevent a school district from buying under the bids received by another school district, when such bids have been requested by such other school district, in compliance with this subchapter and the bids have been made available to the school district, pursuant to an agreement between the bidder and such other school district. (29 Del. C. 1953, § 6920; 59 Del. Laws, c. 205, § 6.)

Subchapter II. Professional Services Negotiation Act

§ 6930. Definitions.

(a) "Professional services" shall mean those services within the scope of practice of architecture, professional engineering, professional land surveying, landscape architecture and geology as defined and authorized by the laws of the State or those services performed by persons engaged in the above-mentioned professions in connection with their professional employment or practice.

(b) "Agency" means the State, its departments, agencies, municipalities, political subdivisions or school districts.

(c) "Firm" means a person, firm, partnership, corporation, association or other legal entity permitted by law to offer professional services.

(d) "Compensation" means the total amount paid by the agency for professional services.

(e) "Agency official" is any elected or appointed official, holder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards. (50 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 389, § 1.)

§ 6931. Public announcement; evaluation procedures.

(a) Each agency shall publicly announce, not less than once a week for 2 consecutive weeks in a statewide news publication, on each occasion when professional services are required, except in cases of valid public emergencies so certified by the agency head and except where professional services are determined by the agency to be necessary during the course of completion of a previously awarded public works contract and the agency determines that the interest of the State would be best served by procuring such additional or

supplemental professional services from a firm already under contract for the project or public works contract for which supplemental or additional professional services are required, provided that such additional or supplemental professional services are within the scope of the contract. Such announcement shall include:

- (1) The project identification;
- (2) General description and scope of the projects;
- (3) Location;
- (4) Deadline for submissions of brief letters of interest; and
- (5) Criteria for selection of professionals including any special criteria required for any particular project, and shall indicate how interested professionals can apply for consideration.

Additional advertising shall be at the discretion of the agency.

(b) Each agency shall encourage firms engaged in the lawful practice of their profession, who desire to provide professional services to the agency, to submit annually a statement of qualifications and performance data.

(c) Each agency shall establish written administrative procedures for the evaluation of applicants. These administrative procedures must be adopted and made available to the public by each agency before publicly announcing an occasion when professional services are required. The following criteria should be utilized in ranking the applicants under consideration:

- (1) Experience and reputation;
- (2) Expertise (for the particular project under consideration);
- (3) Capacity to meet requirements (size, financial condition, etc.);
- (4) Location (geographical);
- (5) Demonstrated ability;
- (6) Familiarity with public work, its requirements and systems;
- (7) Distribution of work to individuals and firms (economic considerations, and to broaden the base from which selections are to be made); and

(8) Other criteria which may be required in special cases.

Because of the diversity of professional services required on a variety of projects, each project must be given individual attention, and a weighted average should be applied to criteria according to its importance to each project. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 61 Del. Laws, c. 3, § 2.)

Effect of amendment. — 61 Del. Laws, c. 3, exception at the end of the first sentence of the effective Jan. 15, 1977, added the second first paragraph in subsection (b).

§ 6932. Selection.

(a) For each proposed project, the agency shall evaluate current qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with firms regarding their qualifications, approach to the project and ability to furnish the required service. Professional service compensation shall not be considered in these discussions.

(b) Based upon the criteria established pursuant to § 6931(c) of this title, and any specific criteria for the project and discussions, the agency shall rank in order of preference the applicants deemed to be qualified to perform the required services.

(c) Beginning with the qualified firm designated first on the preference list, the agency shall negotiate for professional services at compensation which the agency determines is fair and reasonable. In making such determination the agency shall conduct an analysis of the cost of the professional services required, in addition to considering their scope and complexity. For all lump-sum multiple of direct personnel expense or cost-plus-a-fixed-fee professional service contracts, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(d) Should the agency be unable to negotiate a satisfactory contract with the qualified firm designated to be first on the preference list, at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The agency shall then undertake negotiations with the second qualified firm on the preference list. Failing accord with the second qualified firm, negotiations shall be formally terminated. The agency will negotiate with the remaining firms on the list.

(e) After accomplishing the evaluation and conducting discussions and negotiations, the agency shall select 1 applicant and prepare a public notice within 10 days after awarding the contract stating the firm selected. This notice will appear in a statewide news publication or by letter to all applicants. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1.)

§ 6933. Reports.

At the end of each fiscal year each agency shall prepare a report stating project number, name of firm selected and amount paid for professional services for each contract. All state agencies including school districts will file a copy of this report with the Secretary of Administrative Services. All other political subdivisions and incorporated towns will file this report in the principal office of the agency. This report will be available to the public. (60 Del. Laws, c. 389, § 1.)

§ 6934. Prohibition against contingent fees.

(a) Each contract entered into by the agency for professional services shall contain a prohibition against contingent fees as follows: The firm offering professional services swears that he/it has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he/it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement. For the breach of violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

(b) Any individual, corporation, partnership, firm or company, other than a bona fide employee working primarily for the firm offering professional services, who offers, agrees or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership or firm, and to be paid, or is paid, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or the making of a contract for professional services, shall upon conviction be punished pursuant to § 6936 of this title.

(c) Any firm offering professional services or any group, association, company, corporation, firm or partnership thereof who shall offer to pay, or pay, any fee, commission, percentage, gift or any other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall upon conviction be punished pursuant to § 6936 of this title.

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift or any other consideration, contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership or corporation, shall be upon conviction punished pursuant to § 6936 of this title. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 580, § 1.)

§ 6935. State assistance to local agencies.

The Department of Administrative Services shall provide, upon request by a municipality, political subdivision or school board, and upon reimbursement of the costs involved, assistance in selecting professional services firms and negotiating professional service contracts. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 580, § 1.)

§ 6936. Penalty; jurisdiction.

Any person who violates this subchapter shall be punished by a fine of not less than \$1,000 nor more than \$2,000, or by imprisonment for not more than 6 months, or both; and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than \$2,000 nor more than \$5,000, or by imprisonment for not more than 1 year, or both. The Superior Court for the State shall have exclusive original jurisdiction over offenses under this subchapter. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1.)

§ 6937. Administrative provisions.

(a) Any professional service contract of \$25,000 or less for the completed job will be excluded from all portions of this subchapter with the exception of §§ 6933, 6934(d) and 6936 of this title.

(b) Any intentional fragmentation of a project award or second party award to make it eligible to comply with subsection (a) of this section shall be prohibited. (59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 61 Del. Laws, c. 3, § 3.)

Effect of amendment. — 61 Del. Laws, c. 3, effective Jan. 15, 1977, substituted "\$25,000" for "\$5,000" in subsection (a).